

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

FERDINAND ANTIGO, ET AL.

PLAINTIFFS

V.

CIVIL ACTION NO.: 1:11cv408-HSO-RHW

MICHAEL V. LOMBARDI, ET AL.

DEFENDANTS

PLAINTIFFS' RESPONSE TO MOTION TO DISMISS

COMES NOW Plaintiffs by and through counsel and serves this their Response to the Motion to Dismiss filed by Southern Mississippi Pinestraw, LLC. In support of this response, Plaintiff respectfully represent to the Court as follows:

1. The Defendant seeks to dismiss the current case by alleging that Plaintiffs have failed to state a claim upon which relief can be granted. This is simply not true. Plaintiffs must only show that they are owed minimum and/or overtime wages for the FLSA claim. Plaintiff is not required to proffer factual evidence regarding damages at the complaint stage. *Nicholson v. UTI Worldwide, Inc.*, 2010 WL 551551 *3 (S.D. Ill. February 12, 2010)(citing *Xavier v. Belfor USA Group, Inc.*, 2009 WL 411559 (E.D. La. February 13, 2009). "Any district judge (for that matter, any defendant) tempted to write 'this complaint is deficient because it does not contain ...' should stop and think: What rule of law *requires* a complaint to contain that allegation?" *Doe v. Smith*, 429 F.3d 706, 708 (7th cir. 2005).

2. Plaintiffs' Complaint clearly explains that: (1) Plaintiffs have worked as

non-exempt employees for the Defendant in the past three years; (2) Plaintiffs worked over forty (40) hours per week; and (3) Plaintiffs were not compensated for the overtime hours they worked. It is impossible for anyone to claim they cannot understand the basis for this overtime claim. This Defendant is not the first that has attempted to escape discovery by filing such frivolous motions to dismiss before this Court. See *pleadings from Bass, et al v. City of Jackson, Miss.*; Civil Action No. 3:09-CV-549-CWR-FKB; attached hereto as Exhibit "A."

3. If Defendant wants to claim: (1) it paid all the minimum wage and/or overtime owed; (2) Plaintiffs did not work overtime hours; and/or (3) Plaintiffs are exempt from minimum wage and/or overtime wages; those arguments are affirmative defenses that can be argued at the summary judgment stage and at trial.

4. The Defendant also attempts to proffer factual evidence with no actual evidence to back it up. For instance, the Defendant claims it paid for the Plaintiffs' visas expenses and that Plaintiffs only worked two days. This is absolutely not true, and discovery regarding this matter will show that these allegations by Defendant are not true.

5. Finally, the Plaintiffs have claimed in their complaint that they were placed into force labor and trafficked by the Defendant. The Plaintiffs are not required to specify all of the exact facts for each Plaintiff and each Defendant to provide the Defendant with ample notice to respond to the allegations of human trafficking. The Defendant claims that the Plaintiffs just did not show up to ride to work; however, the discovery in this case will show that they actually escaped from the filthy, unsecured,

and totally bare trailer trucks that had no potable water, food, proper beds, or even mattresses on the Defendant's premises where they were required to live.

WHEREFORE, Plaintiff respectfully requests that the Defendant's Motion to Dismiss be denied.

This, the 29th day of December, 2011.

Respectfully submitted,

s/ Nick Norris
Nick Norris (MB No. 101574)
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Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I, Nick Norris, attorney for Plaintiff do hereby certify that I have this day filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing or mailed, via United States Mail, postage prepaid, on all counsel of record.

THIS, the 29th day of December, 2011.

s\ Nick Norris
NICK NORRIS